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Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 03-60 – Implementation of Triennial Review Order

Dear Ms. Cottrell:

Verizon Massachusetts ("Verizon MA") is responding to the comments filed by several CLECs concerning its proposal to offer in Massachusetts through interconnection agreement amendments the same processes as currently in effect in New York for basic hot cuts using Verizon's WPTS system and for Large Job and Batch hot cuts at the rates recently approved by the New York Public Service Commission ("NY PSC"). The CLECs who filed comments – AT&T, Conversent, Covad, and MCI – generally support Verizon MA's proposal but raise four issues that require a response.

First, AT&T and Conversent request that Verizon MA clarify its intentions regarding the application of an Integrated Digital Loop Carrier ("IDLC") surcharge for hot cuts that was approved by the NY PSC and clarify an "ambiguity in Verizon's New York tariff regarding the application of Verizon's IDLC-Copper Surcharge ..." AT&T Comments at 1. Verizon MA intends to apply the IDLC surcharge (and related Installation Dispatch charge) in the same circumstances authorized by the NY PSC and at the rates approved by that agency. As for application of the surcharge, Verizon MA does not understand AT&T's observation that there is an "ambiguity" as to when the surcharge applies. It is clear from the New York proceeding that the surcharge applies only in those situations in which a CLEC orders a hot cut from a loop provisioned on IDLC and the CLEC specifically requests that it be migrated to an all-copper loop facility, or any type of loop facility that is available only on copper, instead of a Universal Digital Loop Carrier ("UDLC") facility. For instance, if Verizon MA must migrate an IDLC loop to another facility and the CLEC is indifferent as to whether it is provisioned on copper or

UDLC, no surcharge applies; however, if the CLEC specifically requests that it be provisioned on a copper loop, the surcharge applies. This approach is clear and easy to apply and places the decision squarely with the CLEC.

Second, Conversent and MCI take issue with Verizon MA's proposal to use the rates approved by the NY PSC for basic WPTS hot cuts and Large Job and Batch hot cuts. Conversent argues that the Department should modify the New York approved charges by substituting Massachusetts labor rates for the labor rates used to set the New York charges. Taking a somewhat different tack, MCI asserts that the New York rates should only be "put into effect on an interim basis with the understanding that they will be included in the next [Verizon MA] TELRIC cost proceeding." MCI Comments at 2.

Conversent's position is without merit because it selects only one of the inputs in determining hot-cut costs which it believes will lower rates based on different values between Massachusetts and New York, but ignores other inputs that would have an offsetting impact. For example, the use of Massachusetts-specific values associated with travel, common overheads, and gross revenue loading move costs in the opposite direction compared to differences in labor rates. Conversent also appears not to recognize that Massachusetts labor rates were used for a number of hot-cut related activities in the New York study because the Verizon work groups performing the function (such as the NMC and RCCC) are physically located in Massachusetts. Thus, its estimate of a 12 to 20 percent difference in the rates is simply incorrect.

Moreover, if Verizon MA were to file a cost analysis for Massachusetts, it would propose substantially higher rates than adopted in New York. Verizon MA's proposal here to use the rates approved by the NY PSC is a compromise position that is intended to make the hot-cut options available at reasonable rates without the need for protracted litigation. Conversent's effort to take this compromise position and selectively adjust for a single input is unwarranted.

As for MCI's suggestion, Verizon MA can agree to file Massachusetts-specific rates in its next TELRIC cost filing and apply the New York rates only until the Department approves new rates for Verizon MA. Verizon MA's proposal was not intended to preclude its filing of Massachusetts-specific rates in a future TELRIC filing, subject to Department review and approval.

Third, Covad argues that the Department should "prevent any attempts by Verizon to discriminate between users of loops for voice and data, therefore require Verizon to migrate xDSL loops being used to provide a voice service, as well as line sharing, line splitting and loop sharing arrangements, using the same processes and at the same rates as voice loops." Covad Comments at 3. Verizon MA's proposal is not discriminatory as Covad alleges.

Covad concedes that the migration of xDSL loops is being addressed in the New York Carrier Working Group and Verizon's Change Management process. Covad Comments at 4. The operations issues relating to hot cuts for xDSL loops are different from POTS loops which is why there is a need for these industry fora to address the issues. Verizon is working collaboratively with CLECs to fashion appropriate processes, and once these are set, Verizon MA will propose to implement the same processes here. There is no reason for the Department to take any action while the issues are being addressed in the industry collaboratives.

Finally, Covad takes issue with Verizon MA's proposal to provide the hot cut options to CLECs pursuant to interconnection agreements. Covad maintains that Verizon MA should tariff the processes rather than incorporate the processes into individual CLEC interconnection agreements. Covad's position is without merit.

Verizon MA has a right under the 1996 Act to include arrangements relating to access to unbundled network elements, such as loops, in its interconnection agreements with CLECs. Although Verizon MA has in the past tariffed Section 251 arrangements pursuant to Department directives, it is clear that a continuation of such a practice is unwarranted under the Act. As both the 6th and 7th Circuit Courts of Appeal have found, a state tariffing requirement is preempted because it would "interfere with the procedures established by the federal act." *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441, 444 (7th Cir. 2003); *Verizon North Inc. v. Strand*, 367 F.3d 577 (6th Cir. 2004); *Verizon North Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002); *see also Illinois Bell Telephone Company, Inc. v. Wright*, 2004 U.S. Dist. LEXIS 16757 (US Dist. Ct. N. Dist. Ill. 2004)

In *Verizon North*, the 6th Circuit invalidated a state tariff requirement by concluding:

> By requiring Verizon to file public tariffs offering its network elements at wholesale services for sale to any party , the MPSC's [Michigan Public Service Commission] Order improperly permits an entrant to purchase Verizon's network elements and finished services from a set menu without ever entering into the process to negotiate and arbitrate an interconnection agreement. It thus evades the exclusive process required by the 1996 Act, and effectively eliminates any incentive to engage in private negotiation, which is the centerpiece of the Act.

Verizon North, 309 F.3d at 940.

Verizon MA's proposal to negotiate modifications to interconnection agreements to provide for hot-cut alternatives follows the process expressly contemplated by the

1996 Act. Covad's effort to "evade" entirely that process by asking the Department to order the tariffing of the hot-cut options is not a lawful prerogative of the Department.

In summary, Verizon MA has offered to amend its interconnection agreements to provide the same hot-cut options as are currently available in New York at rates approved by the NY PSC. The Department need take no action now but should step in only if the parties are unable to reach agreement on amendments to their interconnection agreements and the Department is asked by a carrier to arbitrate that dispute in accordance with Section 252 of the 1996 Act.

Very truly yours,

Bruce P. Beausejour

cc: Jesse Reyes, Esq., Hearing Officer
Michael Isenberg, Esq., Telecommunications Director
Attached DTE 03-60 Service List